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Paper No. 10  
JQ

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Society For The Preservation Of Equal Rights For Men,  
Inc.**

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Serial No. 74/**641,527**

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**Carter H. Kokjer and Penny R. Slicer** of Kokjer, Kircher,  
Bowman & Johnson for applicant.

Henry S. Zak, Trademark Senior Attorney, Law Office **108**  
(David Shallant, Managing Attorney).

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Before Sams, Cissel and Quinn, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Society For The  
Preservation Of Equal Rights For Men, Inc. to register the  
mark SPERM for "T-shirts."<sup>1</sup>

The Trademark Senior Attorney has refused registration  
under Sections 1, 2 and 45 of the Act on the ground that the  
matter sought to be registered, as used on the goods, is

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<sup>1</sup> Application Serial No. 74/641,527, filed March 3, 1995,  
alleging dates of first use of June 1993.

ornamental and does not function as a trademark to indicate the source or origin of the goods.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.<sup>2</sup>

Applicant argues, in urging that the refusal be reversed, that its mark SPERM comprises the acronym for applicant's corporate name which is displayed on the T-shirts immediately below and adjacent to the mark SPERM. Thus, according to applicant, there is a "tie" between the mark SPERM and the identification of applicant. Applicant concludes that "whatever aesthetic purpose that it serves, the primary reference to SPERM on the shirt is to indicate the secondary source, if not manufacturer, of the shirt and the mark clearly thus serves as a source indicating mark."

The Trademark Senior Attorney asserts that the record is devoid of evidence to support applicant's claim that the word SPERM is recognized by consumers as an acronym for applicant's name and that, therefore, there is no evidence establishing that the word has significance as an inherently distinctive source indicator. Rather, the Trademark Senior Attorney contends that the word SPERM, as actually used by

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<sup>2</sup> Attached to applicant's appeal brief is a copy of applicant's Registration No. 1,933,577, issued November 7, 1995, for the typed mark SOCIETY FOR THE PRESERVATION OF EQUAL RIGHTS FOR MEN for "T-shirts." Although this submission is technically untimely (Trademark Rule 2.142(d)), the Examining Attorney, in his brief, considered the evidence. Accordingly, this evidence forms part of the record.

applicant on T-shirts, is merely ornamental or decorative and would not be perceived as a trademark for the shirts. The Trademark Senior Attorney has submitted a dictionary definition<sup>3</sup> of the word "sperm": "the male fecundating fluid." *Webster's New Collegiate Dictionary* (1979).

It is well settled that matter which serves as part of the aesthetic ornamentation of goods, such as T-shirts, may nevertheless be registered as a trademark for such goods if it also serves a source-indicating function. In *re Dimitri's Inc.*, 9 USPQ2d 1666 (TTAB 1988). Where, as here, an alleged mark serves as part of the aesthetic ornamentation of the goods, the size, location, dominance and significance of the alleged mark as applied to the goods are all factors which figure prominently in the determination of whether it also serves as an indication of origin. In *re Pro-Line Corp.*, 28 USPQ2d 1141, 1142 (TTAB 1993).

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<sup>3</sup> The dictionary definition accompanied the brief. As noted above, the submission of evidence with an appeal brief is untimely. However, the Board may take judicial notice of material found in standard dictionaries. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). Accordingly, we have considered this evidence in reaching our decision.

A specimen, a photograph showing the front of applicant's T-shirt, is reproduced below.



The word SPERM appears in large, bold letters centered on the shirt immediately above an emblem. In between the letters forming the word are pictorial representations of the male sexual reproductive cell or sperm. This prominent display of the word immediately catches the eye. Clearly, given the manner that the word is actually used as shown by the specimens, consumers would think of the common, ordinary meaning of the word, as opposed to any significance as an acronym for applicant's name. It is our view that the word sought to be registered is a primarily ornamental feature and, therefore, is not likely to be perceived as anything other than part of the thematic whole of the ornamentation of applicant's shirts (that is, a statement about gender equality).

In reaching our decision, we have considered the facts that SPERM is an acronym for applicant's business name and

that the name has been registered as trademark for T-shirts. However, as pointed out by the Trademark Senior Attorney, these facts standing alone do not establish that SPERM is *recognized* by consumers as the acronym for applicant's name. There simply is no evidence that purchasers perceive SPERM as an indicator of source for applicant's T-shirts.

Lastly, the cases cited by applicant, principally *In re Olin Corp.*, 181 USPQ 182 (TTAB 1973), are distinguishable from the case at hand for the reasons indicated by the Trademark Senior Attorney in his brief.

Decision: The refusal to register is affirmed.

J. D. Sams

R. F. Cissel

T. J. Quinn  
Administrative  
Trademark Judges,  
Trademark Trial and  
Appeal Board

**Ser No.** 74/641,527